

ESTTA Tracking number: **ESTTA497653**

Filing date: **10/02/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91178682
Party	Plaintiff Franciscan Vineyards, Inc.
Correspondence Address	STEPHEN L BAKER BAKER AND RANNELLS PA 575 ROUTE 28, SUITE 102 RARITAN, NJ 08869 UNITED STATES jmr@br-tmlaw.com, officeactions@br-tmlaw.com, k.hnasko@br-tmlaw.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	John M. Rannells
Filer's e-mail	mr@br-tmlaw.com, k.hnasko@br-tmlaw.com, charles@domainepinnacle.com
Signature	/John Rannells/
Date	10/02/2012
Attachments	91178682 2nd Notice Reliance 10-2-12.pdf (36 pages)(953481 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X
Franscan Vineyards, Inc.

Opposer

Mark: DOMAINE PINNACLE and
design

v.

Opposition No. 91178682

Serial No.: 78783236

Domaine Pinnacle, Inc.

Applicant

-----X

**OPPOSER'S 2nd NOTICE OF RELIANCE
PURSUANT TO 37 CFR §2.122(e)**

Please take notice that Opposer, Franciscan Vineyards, Inc. ("Opposer"), pursuant to 37 CFR § 2.122(e) is hereby noticing its reliance on the following:

Official Records of the U.S. Patent and Trademark Office, namely relevant portions of the application file wrapper for abandoned Ser. No. 76596876 for the mark DOMAINE PINNACLE and design that was owned by the Applicant herein. The documents annexed hereto were obtained and downloaded from the USPTO TDR database (i.e., TESS database (i.e., the application excerpt) and TSDR database (i.e., the file wrapper documents)). *See* TBMP §704.03(b)(2):

A party to a proceeding before the Board may introduce, as part of its evidence in the case, a copy of an application that is not the subject of the proceeding, by filing, during its testimony period, a copy of the application file, or of the portions which it wishes to introduce, together with a notice of reliance thereon specifying the application and indicating generally its relevance.

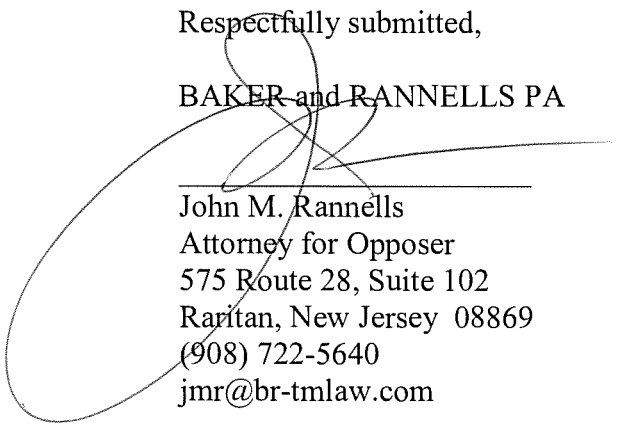
It is not necessary that the copy of the application, or portions thereof, filed under a notice of reliance be certified. The copy of the application, or

portion thereof, may be obtained from the Trademark Document Retrieval (“TDR”) database accessible on the Office’s website.

The annexed documents are relevant to the issue of the relatedness of the parties goods and services, and to the issue of the similarity of the parties marks (i.e., the file wrapper shows that the Examining Attorney refused registration to the Applicant citing Opposer’s Reg. No. 0997378). The file wrapper also includes a definition of the term “Domaine” from a wine publication glossary showing that the term means “estate” which is relevant to the meaning and commercial impression of the parties’ respective marks.

Respectfully submitted,

~~BAKER and RANNELLS PA~~



John M. Rannells
Attorney for Opposer
575 Route 28, Suite 102
Raritan, New Jersey 08869
(908) 722-5640
jmr@br-tmlaw.com

CERTIFICATE OF SERVICE

I hereby certify a true and accurate copy of the foregoing OPPOSER'S 2nd NOTICE OF RELIANCE and annexed documents (file wrapper documents from Ser. No. 76596876) in re: Franciscan Vineyards, Inc. v. Domaine Pinnacle, Inc., Opposition No. 91178682 was served on Applicant, this 2nd day of October, 2012 by sending same via First Class Mail, postage prepaid, to:

Charles Crawford
Domaine Pinnacle, Inc.
150 Richford Rd.
Frelighsburg, Quebec J0J 1C0

DATED: October 2, 2012



John M. Rannells

Baker and Rannells PA

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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Fransican Vineyards, Inc.

Opposer

Mark: DOMAINE PINNACLE and
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Opposition No. 91178682

Domaine Pinnacle, Inc.

Serial No.: 78783236

Applicant

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DOCUMENTS ANNEXED TO

OPPOSER'S 2nd NOTICE OF RELIANCE



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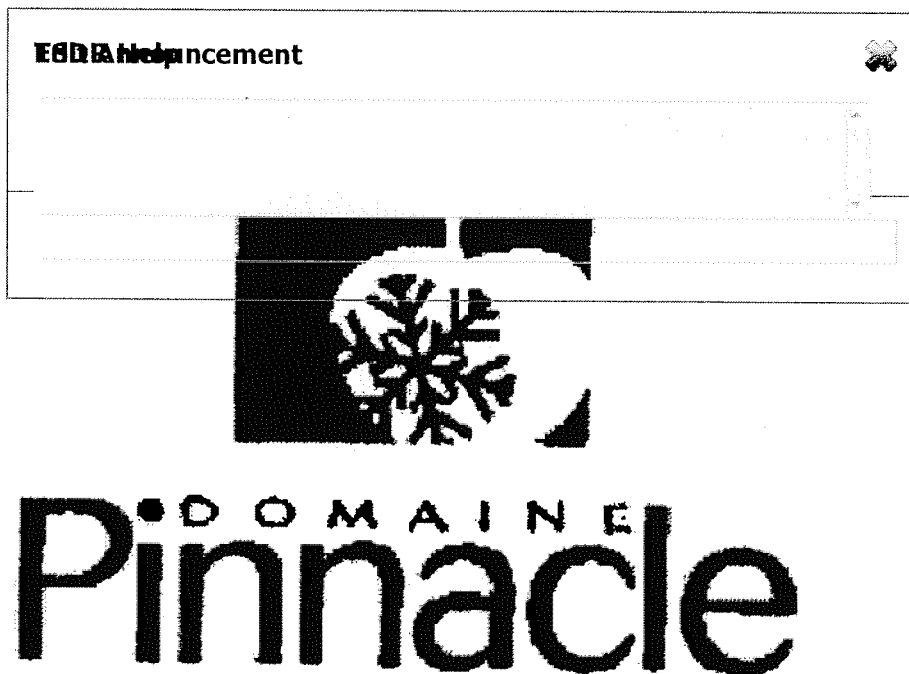
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Word Mark	DOMAINE PINNACLE
Goods and Services	(ABANDONED) IC 032. US 045 046 048. G & S: apple-based non-alcoholic products namely sparkling and non-sparkling juice, sparkling sweet cider, ice cider, purees, compotes, jellies, jams, candies, pies, sauces, baby foods and cereals
	(ABANDONED) IC 033. US 047 049. G & S: Apple-based alcoholic beverages namely ice cider, ice apple
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	01.15.09 - Snowflakes 05.05.25 - Daffodils; Iris (flower); Other flowers 05.09.05 - Apples 26.09.21 - Squares that are completely or partially shaded
Serial Number	76596876
Filing Date	June 10, 2004
Current Basis	1B;44D
Original Filing Basis	1B;44D
Owner	(APPLICANT) Domaines Pinnacle Inc. CORPORATION CANADA 150 Richford Road Frelighsburg (Quebec) CANADA J0L 1C0
Attorney of Record	Thomas W. Brooke
Priority Date	June 3, 2004

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "DOMAINE" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator DEAD
Abandonment Date February 13, 2006

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On August 25, 2012, the USPTO released version 2.0 of Trademark Status and Document Retrieval (TSDR). Please send any TSDR related questions or comments to TSDR@USPTO.GOV. Additional information about the TSDR 2.0 deployment is available

TSDR Quick Tip: Assignment information has been incorporated into the TSDR Status display, if an assignment has been filed on a case. Look for the section labeled "Assignment Abstract of Title Information" located at the bottom of the Status information. A Conveyance Filter has been added providing the option of displaying some or all types of conveyances.

On August 25, 2012,
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Applicant:

Domaines Pinnacle Inc.
150 Richford Road
Frelighsburg Québec
Canada J0L 1C0

Basis:

1(b) Intent-to-Use; and
44(d) Canadian Application No. 1,219,008 filed on June 3, 2004

Goods:

"Apple-based alcoholic beverages; apple-based non-alcoholic products" in International Class 32

Attorney:

Thomas W. Brooke, Esq.
HOLLAND & KNIGHT LLP
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thomas.brooke@hklaw.com



06-10-2004

U.S. Patent & TMOs/TM Mail Rcpt Dt. #87



2008324_v1

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76596876

76596876

TRADEMARK APPLICATION SERIAL NO. _____

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

06/16/2004 SWILSON1 00000145 76596876

01 FC:6001

335.00 OP

HOLLAND & KNIGHT LLP

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Washington, D.C. 20006-6801

202-955-3000
202-955-5564 Fax
www.hklaw.com



June 10, 2004

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THOMAS W. BROOKE
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Internet Address:
tbrooke@hklaw.com

Hon. Commissioner of Patents
and Trademarks
United States Patent & Trademark Office
2900 Crystal Drive
Arlington, VA 22202

Re: Applicant: Domaines Pinnacle Inc.
Mark: **DOMAINE PINNACLE & Design**
Our Ref.: 079197.22222

Dear Sir:

Enclosed please find the following for filing at the United States Patent & Trademark Office:

1. A Trademark Application for Registration; and
2. A drawing of the mark; and
3. A check in the amount of \$335.00 covering related filing fees.

Any additional fees may be charged to the Deposit Account of Holland & Knight LLP, No. 50-1542.

Very truly yours,

HOLLAND & KNIGHT LLP

Thomas W. Brooke
Thomas W. Brooke *prb*

TWB/prb

Enclosures

2010492_v1

**STATEMENT AND DECLARATION
FOR TRADEMARK/SERVICE MARK REGISTRATION
STATEMENT**

Mark: **DOMAINE PINNACLE & Design**

International Class: **32**

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Domaines Pinnacle Inc.

a Québec corporation

having a business address at

150 Richford Road
Frelighsburg (Québec)
Canada J0L 1C0

The above-identified Applicant requests that the trademark shown in the accompanying drawing be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946, as amended, for

“Apple-based alcoholic beverages; apple-based non-alcoholic products” in
International Class 32.

Applicant has a bona fide intention to use the mark in commerce on and in connection with the goods identified above (15 U.S.C. 1051(b), as amended).

The mark will be printed in advertising and promotional materials, and used in other ways customary in the relevant trade or industry. One specimen showing the mark as used in commerce will be presented in accordance with the provisions of 37 C.F.R. Section 2.88.

DECLARATION

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he is properly authorized to execute this application on behalf of the applicant; he believes the applicant to be the owner of the trademark sought to be registered, or, if the application is being filed under 15 U.S.C. 1051(b), he believes applicant to be entitled to use such mark in commerce; to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use the above-identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

DOMAINES PINNACLE INC.

By: _____

Thomas W. Brooke

Title: _____

Counsel

Date: _____

June 10, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/596876

APPLICANT: Domaines Pinnacle Inc.

76596876

CORRESPONDENT ADDRESS:

THOMAS W. BROOKE
HOLLAND & KNIGHT LLP
2099 PENNSYLVANIA AVE NW STE 100
WASHINGTON DC 20006-6801

RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: DOMAINE PINNACLE

CORRESPONDENT'S REFERENCE/DOCKET NO : 079197.22222

Please provide in all correspondence:

CORRESPONDENT EMAIL ADDRESS:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

Serial Number 76/596876

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE. FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.

OFFICE ACTION

The assigned examining attorney has reviewed the referenced application and determined the following.

LIKELIHOOD OF CONFUSION

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), because the applicant's mark, when used on or in connection with the identified goods, so resembles the mark in U.S. Registration No. 997,378 as to be likely to cause confusion, or to cause mistake, or to deceive. TMEP §§1207.01 *et seq.* See the enclosed registration.

Section 2(d) of the Trademark Act bars registration where a mark so resembles a registered mark, that it is likely, when applied to the goods, to cause confusion, or to cause mistake or to deceive. TMEP §1207.01. The Court in *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973), listed the principal factors to consider in determining whether there is a likelihood of confusion. Among these factors are the similarity of the marks as to appearance, sound, meaning and commercial impression and the similarity of the goods. The overriding concern is to prevent buyer confusion as to the source of the goods. *Miss Universe, Inc. v. Miss Teen U.S.A., Inc.*, 209 USPQ 698 (N.D. Ga. 1980). Therefore, any

doubt as to the existence of a likelihood of confusion must be resolved in favor of the registrant. *Lone Star Mfg. Co. v. Bill Beasley, Inc.*, 498 F.2d 906, 182 USPQ 368 (C.C.P.A. 1974).

The applicant's mark "DOMAINE PINNACLE" and design prominently features the term "PINNACLE," which is highly similar to the registrant's mark "PINNACLES." The term "DOMAINE" found in the applicant's mark is a French term indicating "estate," and is descriptive as used in the context of the applicant's beverages. The examining attorney encloses a copy from the applicant's website indicating that its goods are "estate-produced." Please see enclosed copy of www.icecider.com/us.

The examining attorney must look at the marks in their entireties under Section 2(d). Nevertheless, one feature of a mark may be recognized as more significant in creating a commercial impression. Greater weight is given to that dominant feature in determining whether there is a likelihood of confusion. *In re National Data Corp.*, 224 USPQ 749 (Fed. Cir. 1985); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (C.C.P.A. 1976). *In re J.M. Originals Inc.*, 6 USPQ2d 1393 (TTAB 1988). TMEP §1207.01(b)(viii). In the present case, the term "PINNACLE" is the dominant portion of the applicant's mark. When a mark consists of a word portion and a design portion, the word portion is more likely to be impressed upon a purchaser's memory and to be used in calling for the goods or services. *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987); *Amoco Oil Co. v. Amerco, Inc.*, 192 USPQ 729 (TTAB 1976). TMEP §1207.01(c)(ii). The term "PINNACLE" will be the dominant portion of applicant's mark used by consumers to call for such goods.

Turning to the goods of the parties, the applicant indicates a bona fide intent to use its mark on "Apple-based alcoholic beverages; [and] apple-based non-alcoholic products." The registrant uses its mark on "wine." From the applicant's website, it is clear that the applicant's beverages are advertised as "ice apple wine." The applicant's description of its goods are broad enough to include apple-based wines, and the registrant's identified "wines" is broad enough to include apple wines. Thus, it is presumed that the registration encompasses all goods of the type described, including apple wines, that they move in all normal channels of trade, and that they are available to all potential customers. TMEP §1207.01(a)(iii).

If the goods or services of the respective parties are closely related, the degree of similarity between marks required to support a finding of likelihood of confusion is not as great as would apply with diverse goods or services. *ECI Division of E Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443 (TTAB 1980). TMEP §1207.01(b).

As the marks of the parties are similar, and the goods of the parties are closely related if not identical, there exists a likelihood of confusion as to the source of the goods, and registration is refused.

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

If the applicant chooses to respond to the refusal to register, the applicant must also respond to the following informalities.

DISCLAIMER

The applicant must disclaim the descriptive wording "DOMAINE" apart from the mark as shown. Trademark Act Section 6, 15 U.S.C. Section 1056; TMEP §§1213 and 1213.03(a). The wording is merely descriptive because it indicates the term "estate" in English, which describes the nature of the facility at

which the goods are produced. Please see the attached entry from the Wineisms wine glossary at <http://www.valleyvineyards.com>.

The computerized printing format for the *Trademark Official Gazette* requires a standard form for a disclaimer. TMEP section 1213.08(a)(i). A properly worded disclaimer should read as follows:

No claim is made to the exclusive right to use “DOMAINE” apart from the mark as shown.

See In re Owatonna Tool Co., 231 USPQ 493 (Comm'r Pats. 1983).

CLASSIFICATION AND IDENTIFICATION OF GOODS

The applicant has classified “apple-based alcoholic beverages” in International Class 32. The correct classification for apple wine and hard cider is International Class 33. The applicant must either delete these goods or add International Class 33 to the application and specifically identify the nature of the “alcoholic beverages.” 37 C.F.R. §§2.32(a)(7) and 2.85; TMEP §§1401.04(b) and 1402.01.

In the identification, the applicant must use the common commercial names for the goods, be as complete and specific as possible and avoid the use of indefinite words and phrases. If the applicant chooses to use indefinite terms, such as “accessories,” “components,” “devices,” “materials,” and “products,” then those words must be followed by the word “namely” and the goods listed by their common commercial names. TMEP §§1402.01 and 1402.03(a).

The applicant may adopt the following identification of goods, if accurate:

“apple-based non-alcoholic products, namely [please specify, e.g. apple juice, sparkling sweet cider, etc.] in International Class 32;”

“Apple-based alcoholic beverages, namely [please specify, e.g. ice apple wines, sparkling apple wines, hard cider, etc.] in International Class 33.”

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. §2.71(a); TMEP §1402.06. Therefore, the applicant may not amend to include any goods that are not within the scope of goods set forth in the present identification.

MULTIPLE CLASS APPLICATION

If the applicant prosecutes this application as a combined, or multiple-class application, the applicant must comply with each of the following.

- (1) The applicant must list the goods by international class with the classes listed in ascending numerical order. TMEP §1403.01.
- (2) The applicant must submit a filing fee for each international class of goods not covered by the fee already paid. 37 C.F.R. §§2.6(a)(1) and 2.86(a); TMEP §§810.01 and 1403.01. This applies to classes added to pending applications as well as to new applications filed on or after that date.

NOTICE: FEE CHANGE

Effective January 31, 2005 and pursuant to the Consolidated Appropriations Act, 2005, Pub. L. 108-447, the following are the fees that will be charged for filing a trademark application:

- (1) \$325 per international class if filed electronically using the Trademark Electronic Application System (TEAS); or
- (2) \$375 per international class if filed on paper

These fees will be charged not only when a new application is filed, but also when payments are made to add classes to an existing application. If such payments are submitted with a TEAS response, the fee will be \$325 per class, and if such payments are made with a paper response, the fee will be \$375 per class.

The new fee requirements will apply to any fees filed on or after January 31, 2005.

COUNTRY OF INCORPORATION

While the applicant has indicated that it is a corporation of Quebec, the applicant must indicate its country of incorporation. 37 C.F.R. §2.32(a)(3)(ii); TMEP §§803.03(c) and 803.04.

DUAL FILING BASES – SECTIONS 1(b) AND 44(d)

The applicant has filed asserting a bona fide intention to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. §1051(b), and, per the notation made on the drawing page, claiming priority under Section 44(d), 15 U.S.C. §1126(d), based on a foreign application. Under these circumstances, the applicant may rely solely on its intent to use the mark in commerce as the basis for registration and not the expected foreign registration, and still claim the benefit of the priority filing date. If the applicant chooses to do so, this Office will approve the case for publication without waiting for the applicant to submit the foreign registration. Of course, the application must be in condition for publication in all other respects. Moreover, while the application may be approved for publication, the mark will not be registered until an acceptable allegation of use has been filed.

If the applicant wishes to proceed relying on the applicant's intent to use the mark in commerce as the sole basis for registration, with the claim of priority, the applicant should so advise the examining attorney. TMEP §§806.02(f) and 806.04(b).

If the applicant does not so indicate, this Office will presume that the applicant wishes to rely on the foreign registration as an additional basis for registration and will expect the applicant to submit a true copy, a photocopy, a certification, or a certified copy of the foreign registration and, if appropriate, an English translation. It is customary for the translator to sign the translation. TMEP §§1004.01 and 1004.01(b).

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

Jennifer Chicoski

Jennifer D. Chicoski
Trademark Examining Attorney
Law Office 115
571-272-9142
571-273-9142 FAX
jennifer.chicoski@uspto.gov

How to respond to this Office Action:

You may respond formally using the Office's Trademark Electronic Application System (TEAS) Response to Office Action form (visit <http://eteas.uspto.gov/V2.0/oa242/WIZARD.htm> and follow the instructions therein, but you must wait until at least 72 hours after receipt if the office action issued via e-mail). PLEASE NOTE: Responses to Office Actions on applications filed under the Madrid Protocol (Section 66(a)) **CANNOT** currently be filed via TEAS.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>

NOTICE: TRADEMARK OPERATION RELOCATION

The Trademark Operation has relocated to Alexandria, Virginia. Effective October 4, 2004, all Trademark-related paper mail (except documents sent to the Assignment Services Division for recordation, certain documents filed under the Madrid Protocol, and requests for copies of trademark documents) must be sent to:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Applicants, attorneys and other Trademark customers are strongly encouraged to correspond with the USPTO online via the Trademark Electronic Application System (TEAS), at <http://www.uspto.gov/teas/index.html>.

Print: Jan 10, 2005

73006890

TYPED DRAWING

Serial Number

73006890

Status

REGISTERED AND RENEWED

Word Mark

PINNACLES

Standard Character Mark

No

Registration Number

0997378

Date Registered

1974/11/05

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

FRANCISCAN VINEYARDS, INC. CORPORATION DELAWARE 1178 GALLERON ROAD ST.
HELENA CALIFORNIA 94574

Goods/Services

Class Status -- ACTIVE. IC 033. US 047. G & S: WINE. First Use:
1971/05/12. First Use In Commerce: 1971/05/12.

Filing Date

1973/11/20

Examining Attorney

UNKNOWN

Attorney of Record

STEPHEN L. BAKER



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or anything else related to the
winery.



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WINE GLOSSARY

D

Decant - To pour aged bottled wine carefully into a larger vessel, often a glass decanter for the purpose of leaving any accumulated sediment behind. Decanting also lets a wine breathe, and almost always pertains to red wine.

Delicate - Used to describe light- to medium-weight wines with pleasant mild flavor and fragrance. A desirable quality in wines such as Pinot Noir or Riesling. Sometimes pertains to well made wines produced from so called 'lesser grape' varieties.

Demi-Sec - Meaning "half-dry" usually pertaining to Champagne and relating to sweetness. Demi-sec sparkling wines are usually slightly sweet to medium sweet. - so half dry, half sweet.

Dense - Considered a favorable quality in young wines and describes a wine that has concentrated aromas on the nose and palate.

Depth - Describes complexity in a wine that fills the mouth with subtly changing flavours - subtle layers of flavor that go 'deep'.

Dessert Wine - (1) A Sherry or other fortified wine. (2) Sweet wine customarily drunk with dessert or by themselves 'as' dessert, usually in small amounts or single portions.

Developed - A mature wine that displays flavors that emerge after aging for a period of time in the bottle.

Direct - Wines that come right to the point and reveal their entire personality immediately.

Dirty - Describes any of the undesirable, rank, off-putting odors that can occur in a wine, including those caused by bad barrels or corks. A sign of poor winemaking.

Disgorgement/Disgorged - A step in the traditional process of sparkling wine or champagne production of removing frozen sediment from the neck of the bottle after secondary fermentation.

DOC (DENOMINAZIONE DI ORIGINE CONTROLLATA) - The regulatory wine system set up in

info@valleyvineyards.com

homeandwine

DOC (DENOMINAZIONE DI ORIGINE CONTROLLATA) - The regulatory wine system, set up in Italy in 1963. Set up to protect the quality of the wines by specifying geographical limits, grape varieties, alcohol levels, top yields per acre, and aging requirements for particular wines.

DOCG (DENOMINAZIONE DI ORIGINE CONTROLLATA E GARANTITA) - Represents the highest level of quality among Italian wines, and is basically the next step above DOC in Italy's regulatory wine system.

Dolcetto - Pleasing red grape variety of the Piedmonte region of northern Italy, that produces a light, fruity wine. Dolcetto literally means 'little sweet one', and likely stems from a quality of the grapes rather than the wine that is not sweet. Some production in California as well.

Domaine - French term meaning 'estate' and in Burgundy a domaine may incorporate numerous separate vineyards.

Dosage - The process of adding sweetened wine to champagne just prior to closure.

Dry - Description of a wine produced specifically to possess little or no sweetness, whereby the sugars have been almost totally fermented. Commonly defined as containing less than about 0.5% residual sugar.

Drying out - The fading of the fruit in mature red wines. Acid, tannin and oak begin to predominate over fruit flavors and at this stage the wine will not improve.

Dumb - Characteristic description typical of wines that are too young or possibly too cold that refuse to reveal much flavor or bouquet at all, closed.

E

Earthy - At its best, a pleasant, clean quality that adds complexity to aroma and flavors and hints of rich-earth. A certain earthiness can be favorable, positive; too much can cross over to the more unfavorable barnyardy aspects of a wine.

Eiswein - Just like it sounds in English 'ice wine', the German term also refers to a rare sweet wine made from late-harvested grapes that have frozen on the vine. British Columbia and Ontario also produce delightful ice wines.

Elegant - Used to describe well-balanced wines of distinguished quality and grace.

Empty - A wine without character, hollow.

Enology - The science and study of wine and winemaking. Also spelled oenology.

En Tirage - A French term for the period of time a sparkling wine has rested in the bottle in contact with the yeast sediment from the secondary fermentation.

Erzeugerabfüllung - 'Estate bottled' under German wine regulations.

Essence - (1) Aroma 'kits' containing vials of various flavor essences - designed to 'pull' specific bouquet and taste qualities from the wine. (2) Sometimes used to describe a sweet, late-harvest red wine.

Ethyl Acetate - A substance that contributes the sweet, vinegary smell that often accompanies acetic acid.

Extra Dry - A term not to be taken literally that appears on Champagne or other sparkling wine labels to indicate not-quite-dry, not as dry as Brut.

Extract/Extracted - Commonly refers to the coloring imparted to wine during the fermentation process by the grape skins used. Usually a positive quality, although high extract wine can also be highly tannic. Can also refer to the richness and depth of concentration of fruit flavor in a wine.

Eucalyptus - A term sometimes used to describe the characteristic in the bouquet of Cabernet Sauvignon grown in warm climates.

F

Fading - Describes a wine that is losing its color, fruitiness or flavor, most often as a result of age.

Fat - Full-bodied, bold, ripe, rich, flavor laden, high alcohol wines low in acidity give a "fat" or fleshy impression on the palate.

Faugeres - Refers to a Languedoc region and the wines produced there.

Fendant - A dry Swiss white wine produced from the Chasselas grape.

Fermentation - The primary chemical process in winemaking by which yeast converts sugar into alcohol and carbon dioxide thus turning grape juice into wine.

Field Blend - Refers to the single wine produced when a vineyard is planted with several different varieties and the grapes are harvested together.

Filtering - The process of removing particles from wine after fermentation.



Domaine Pinnacle

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Domaine Pinnacle is a family-owned orchard and cidery, dedicated to creating the world's best Ice Apple Wine.

Acclaimed by wine critics, chefs and sommeliers, Domaine Pinnacle Ice Apple Wine is truly an outstanding taste experience! We invite you to discover our estate-produced, one-of-a-kind, premium product line and to visit our orchard and cidery located on the southern slopes of Pinnacle Mountain in the Eastern Townships of Quebec, Canada.

If you would like to receive occasional information on Domaine Pinnacle products and events, please [click here](#) to subscribe to our newsletter.


Latest News

- June 1, 2004 - Pinnacle Signature Special Reserve Ice Apple Wine wins Gold at Quebec's Coupe des Nations and another Gold at the All Canadian Wine Championships.
- November 19, 2003 - Camus to brand and market Pinnacle Ice Apple Wine. World's largest family-owned cognac maker to sell Pinnacle Ice Apple Wine through global network

★★★★★
Malcom Anderson
Wine Critic
The Montreal Gazette



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Products


Award-winning and critically-acclaimed, Pinnacle Ice Apple Wine is produced from a select blend of hand-picked apples, harvested after frost and extracted naturally over the winter months. The unique combination of Ideal summer growing conditions and cold Canadian winters create a product like nothing else you have ever tasted!

Rich, golden and full-bodied in the glass, our Ice Apple Wine has an appealing mellow flavor and clean, distinct taste of apples that builds from its smooth, velvety start to its well-balanced, long-lasting finish.

Domaine Pinnacle Ice Apple Wine

Characteristics

- Stunning richness... over 80 apples used to product each bottle!
- Incredible complexity... an assemblage of 6 varieties



CAMUS

What Makes our Ice Apple Wine Unique?

[Click Here to Find Out](#)

Domaine Pinnacle
Products Are
Certified Kosher



- Incredible complexity... an assemblage of 6 varieties of apples
- Exceptionally balanced... fresh apple taste with sweet, smooth finish
- All natural... no additives

Service

Due to product complexity, can be served on its own or as an exceptional complement to a variety of foods...

- as an apéritif
- with pâtés, foie gras, game or poultry
- with spicy dishes
- with fine cheeses, particularly blue, goat, aged cheddar and brie
- with desserts, including of course, many apple-based classics
- on its own, as a digestif, to end a perfect meal!

For more service ideas, refer to our [Recipes](#) section.

375 ml. 12.5% Alc./Vol.
SERVE WELL CHILLED (4-6°C; 40-45°F)

[Click here for printable Product Spec Sheet \(PDF file\).](#)





THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Trademark Application of

Domaines Pinnacle Inc.

Serial No. 76/596,876

Mark: **DOMAINE PINNACLE**

Filed: June 10, 2004

:
:
: Trademark Examining Operations
:
: Trademark Examining Attorney
: Jennifer Chicowski
: Law Office 115
:
:
:

Honorable Commissioner
Of Patents and Trademarks

This is responsive to the Office Action issued on January 11, 2005.

AMENDMENT

Please delete the identification of goods and replace it with the following:

"International Class 32. Apple-based non-alcoholic based beverages namely ice cider;

International Class 33. Apple-based alcoholic beverages namely ice cider, ice apple wine".

A check for \$325.00 is attached to cover the additional class.

DISCLAIMER

Please enter the following disclaimer into the application.

"No claim is made to the exclusive right to use '**DOMAINE**' apart from the mark as shown".

COUNTRY OF INCORPORATION

Applicant is a Canadian corporation.

REFUSAL TO REGISTER

The Examiner Attorney cited prior U.S. Trademark Registration No. 997,378 **PINNACLES** in the name of Franciscan Vineyards, Inc. as potential bar to registration. There is



07-11-2005

U.S. Patent & TMOfo/TM Mail Rcpt Dt. #64

no likelihood of consumer confusion between the goods of Applicant sold under its **DOMAINE PINNACLE & Design** mark in connection with apple-based beverages and the goods of Franciscan Vineyards sold under the mark **PINNACLES**. The marks are different in sound sight and meaning, the goods are different and the methods of promotion, channels of trade, classes of customers and other factors leading to likelihood of confusion are all different as well.

The marks themselves are quite different as Applicant's mark features a prominent design feature suggesting a clear relationship with apples. The design and the word "**PINNACLE**" both appear in a highly stylized fashion and are very different than the **PINNACLES** mark used by Franciscan Vineyards to designate a region in California from where its grapes are grown and/or where its wines are bottled. "Pinnacles" is the name of place in California in or near Monterey County and also is the name of a monument in Monterey County California.

The word "**PINNACLES**" is a very weak mark for Franciscan Vineyards because of its strong geographic significance and descriptive nature. Therefore, the prior registration of Franciscan Vineyards should be given little or no significance when analyzing the registrability of Applicant's mark.

The goods themselves are quite different. When the word "wine" is used alone, it always relates strictly to wine made from grapes. The prior Registrant's goods are strictly grape-based wines. In contrast, Applicant's goods are clearly apple-based, as the amended description of goods and the original description of goods made clear and as the mark itself make clear. Those interested in buying standard grape-based wines are not going to be interested in purchasing apple-based wine. One would not normally expect or anticipate that a vineyard offering a grape-based wine would also sell apple-based wine. The two (2) products are very different and are sold to different groups of people for different uses. The person who buys grape-based wine would generally not be someone who was going to be buying an apple-based wine at the same location or at the same time.

Applicant's goods are not sold as wine in Canada, the home country of the Applicant. Indeed, Applicant's goods are known as "ice-cider." In the United States however, such goods

are often classified as "ice-apple wine." For all the foregoing reasons, the Examining Attorney is respectfully requested to withdraw the citation to the prior registration of Franciscan Brothers for the mark **PINNACLES** and allow the application of the Applicant for the mark **DOMAINE PINNACLE & Design** to proceed.

Applicant wishes to continue to base this application both upon its Canadian trademark application and upon an intent to use. Therefore, this application should be suspended until such time as a copy of the Canadian registration is submitted or the Canadian application is withdrawn as a basis for the U.S.

Please do not hesitate to contact counsel for Applicant should there be any questions.

RESPECTFULLY SUBMITTED,

DOMAINE PINNACLE INC.

BY: 

Thomas W. Brooke
Holland & Knight LLP
2099 Pennsylvania Avenue, Suite 100
Washington, D.C. 20006
(202) 663-7271

DATED: July 11, 2005

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Domaine Pinnacle Inc.

Application No.: 76/596,876

Mark: **DOMAINE PINNACLE & Design**

Filing Date: June 10, 2004

Examining Attorney:
Jennifer Chicowski

Law Office: 115

SUPPLEMENTAL RESPONSE

Honorable Commissioner Sir:

This Response supplements the Amendment submitted to the Trademark Office on July 11, 2005. The only change is to the identification of goods in International Class 32 of the Amendment. Please amend the description of goods to read as follows for International Class 32: "apple-based non-alcoholic products namely sparkling and non-sparkling juice, sparkling sweet cider, ice cider, purees, compotes, jellies, jams, candies, pies, sauces, baby foods and cereals."

In all other respects, the Response filed on July 11, 2005 is correct.

Respectfully submitted,

DOMAINE PINNACLE INC.

Date:

7/14/05

By:

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07-14-2005

U.S. Patent & TMO/TM Mail Rpt Dt. #72

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/596876

APPLICANT: Domaines Pinnacle Inc.

CORRESPONDENT ADDRESS:

THOMAS W. BROOKE
HOLLAND & KNIGHT LLP
2099 PENNSYLVANIA AVE NW STE 100
WASHINGTON DC 20006-6801

76596876

RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: DOMAINE PINNACLE

CORRESPONDENT'S REFERENCE/DOCKET NO : 079197.22222

Please provide in all correspondence:

CORRESPONDENT EMAIL ADDRESS:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

Serial Number 76/596876

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE. **FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.**

OFFICE ACTION

This letter responds to the applicant's communications filed July 11, July 14 and July 21, 2005.

The applicant was previously required to indicate its country of formation, disclaim the exclusive right to use the wording "DOMAINE" apart from the mark as shown, and indicate whether the applicant wishes to continue to seek registration based upon both Sections 1(b) and 44. The submitted amendments are acceptable and have been entered into the record. The examining attorney also acknowledges the applicant's submission of the additional filing fee of \$325 filed electronically on July 21, 2005.

LIKELIHOOD OF CONFUSION

Registration was refused under Trademark Act Section 2(d), 15 U.S.C. §1052(d), because the mark for which registration is sought so resembles the mark shown in U.S. Registration No. 997,378 as to be likely, when used on the identified goods, to cause confusion, or to cause mistake, or to deceive.

The examining attorney has considered the applicant's arguments carefully but has found them unpersuasive. For the reasons below, the refusal under Section 2(d) is maintained and CONTINUED.

Similarity of the Marks

The applicant's mark "DOMAINE PINNACLE" and design is highly similar to the registered mark "PINNACLES." The applicant was required to and has disclaimed the exclusive right to use the descriptive term "DOMAINE" apart from the mark as shown. While the examining attorney cannot ignore a disclaimed portion of a mark and must view marks in their entireties, one feature of a mark may be more significant in creating a commercial impression. *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (C.C.P.A. 1976); *In re El Torito Restaurants Inc.*, 9 USPQ2d 2002 (TTAB 1988); *In re Equitable Bancorporation*, 229 USPQ 709 (TTAB 1986). Disclaimed matter is typically less significant or less dominant.

The applicant submits that "[t]he marks themselves are quite different as Applicant's mark features a prominent design feature suggesting a clear relationship with apples. The design and the word 'PINNACLE' both appear in a highly stylized fashion and are very different than the PINNACLES mark used by Franciscan Vineyards to designate a region in California from where its grapes are grown and/or where its wines are bottled." Applicant's Response of July 11, 2005 at p. 2.

The applicant has not submitted any evidence in support of its claim that the registrant's goods emanate from a specific geographic region or any substantiating evidence of the geographic significance of the term "PINNACLE." The term "PINNACLE" has common dictionary definitions [1] that are more likely to be understood by general consumers than a relatively obscure geographic reference. Moreover, when a mark consists of a word portion and a design portion, the word portion is more likely to be impressed upon a purchaser's memory and to be used in calling for the goods or services. *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987); *Amoco Oil Co. v. Amerco, Inc.*, 192 USPQ 729 (TTAB 1976). TMEP §1207.01(c)(ii).

Relatedness of Goods

The applicant has amended the goods on which the mark is intended to be used to include "Apple-based alcoholic beverages namely ice cider, ice apple wine." Such goods remain closely related to the "wines" identified by the registrant. The applicant submits that "[t]he goods themselves are quite different. When the word 'wine' is used alone, it always relates strictly to wine made from grapes. The prior Registrant's goods are strictly grape-based wines. In contrast, Applicant's goods are clearly apple-based, as the amended description of goods and the original description of goods made clear and as the mark itself make clear. Those interested in buying standard grape-based wines are not going to be interested in purchasing apple-based wine." Applicant's Response of July 11, 2005, p. 2.

The goods of the parties need not be identical or directly competitive to find a likelihood of confusion. Instead, they need only be related in some manner, or the conditions surrounding their marketing be such that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that they come from a common source.

On-line Careline Inc. v. America Online Inc., 229 F.3d 1080, 56 USPQ2d 1471 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Prods. Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re Int'l Tel. & Tel. Corp.*, 197 USPQ 910 (TTAB 1978); TMEP §1207.01(a)(i). Both the applicant's alcoholic beverages and the registrant's wines are likely to be carried in the same retail establishments, namely liquor stores, wine and beer stores, and the wine and beer section of grocery stores. The goods are likely to be encountered by those in the market for alcoholic beverages and while potential consumers may not be likely to substitute one product for another, they are not immune from mistakenly believing that the goods come from a common source.

Although the examining attorney has continued the refusal of registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

If the applicant chooses to respond to the continued refusal to register, the applicant must also respond to the following informalities.

CLASSIFICATION AND IDENTIFICATION OF GOODS

The applicant was previously required to amend and properly classify the goods on which the applicant has a bona fide

intention to use the mark. In the applicant's amendment of July 11, 2005, the applicant adopted the following identification of goods.

"International Class 32. Apple-based non-alcoholic based beverages namely ice cider; [and]"

"International Class 33. Apple-based alcoholic beverages namely ice cider, ice apple wine."

The applicant's amendment of July 14, 2005 attempts to broaden the scope of the amended identification of goods in International Class 32 to include "apple-based non-alcoholic products namely sparkling and non-sparkling juice, sparkling sweet cider, ice cider, purees, compotes, jellies, jams, candies, pies, sauces, baby foods and cereals."

Once an applicant amends the identification of goods or services in a manner that is acceptable to the examining attorney, the amendment replaces all previous identifications, and thus restricts the scope of goods/services to that of the amended language. Further amendments that would add to or expand the scope of the recited goods or services, as amended, will not be permitted. *In re Swen Sonic Corp.*, 21 USPQ2d 1794 (TTAB 1991); *In re M.V Et Associes*, 21 USPQ2d 1628 (Comm'r Pats. 1991). TMEP Section 1402.07(e).

To the extent that the goods identified as "purees, compotes, jellies, jams, candies, pies, sauces, baby foods and cereals" are not properly classified in International Class 32 and are beyond the scope of the "apple-based non-alcoholic based beverages namely ice cider," the applicant must withdraw the amendment adding such goods.

To the extent the amendment broadens the goods in International Class 32 from "Apple-based non-alcoholic based beverages" to "apple-based non-alcoholic products," the applicant must withdraw the amendment.

The wording "apple-based alcoholic beverages namely ice cider" in the identification of goods in International Class 33 is unacceptable as it could identify goods in other classes. The applicant may adopt the following wording, if accurate: "apple-based alcoholic beverages namely hard ice cider." TMEP §§1401.04(b), 1402.01 and 1402.03.

The applicant may adopt the following identification of goods, if accurate:

"Apple-based non-alcoholic based beverages namely ice cider in the nature of sparkling and non-sparkling juice, and sparkling sweet cider in International Class 32;"

"Apple-based alcoholic beverages namely hard ice cider, and ice apple wine in International Class 33."

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. §2.71(a); TMEP §1402.06. Therefore, the applicant may not amend to include any goods that are not within the scope of goods set forth in the present identification.

MULTIPLE CLASS APPLICATION

If applicant prosecutes this application as a combined, or multiple-class application, then applicant must comply with each of the following for those goods based on an intent to use the mark in commerce under Trademark Act Section 1(b) and a foreign registration under Trademark Act Section 44(e):

(1) Applicant must list the goods by international class with the classes listed in ascending numerical order. TMEP § 1403.01; and

(2) Applicant must submit a filing fee for each international class of goods not covered by the fee already paid (current fee information should be confirmed at <http://www.uspto.gov>). 37 C.F.R. §2.86(a)(2); TMEP §§810 and 1403.01. Currently, the applicant has submitted filing fees for two classes of goods.

COPY OF FOREIGN REGISTRATION REQUIRED

Applicant must submit a copy of the foreign registration to satisfy the requirement of Trademark Act Section 44(e). 15 U.S.C. §1126(e). If the foreign certificate of registration is not written in English, then applicant must provide an English translation signed by the translator. *See* TMEP §§1004.01 and 1004.01(b).

The application does not presently contain a copy of the foreign registration. As the applicant has indicated that it wishes the application to proceed on both of the original filing bases, the application must include a true copy, photocopy, certification or certified copy of a foreign registration or a registered extension of protection of an international registration from the applicant's country of origin. If applicant's country of origin does not issue registrations or certificates of extension of protection, applicant may submit a copy of the international registration, showing that protection of the international registration has been extended to applicant's country of origin. TMEP §§1004 *et seq.* and 1016.

Applicant's country of origin must either be a party to a convention or treaty relating to trademarks to which the United States is also a party, or must extend reciprocal registration rights to nationals of the United States by law. *See* TMEP §§1002.01 and 1004.

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

Jennifer Chicoski

Jennifer D. Chicoski
Trademark Examining Attorney
Law Office 101
571-272-9142
571-273-9142 - FAX
jennifer.chicoski@uspto.gov

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond formally using the Office's Trademark Electronic Application System (TEAS) Response to Office Action form (visit <http://www.uspto.gov/teas/index.html> and follow the instructions, but if the Office Action has been issued via email, you must wait 72 hours after receipt of the Office Action to respond via TEAS).
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above and include the serial number, law office number and examining attorney's name in your response.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

[1] **pin·na·cle** (pīn'c-kel) *noun*

1. *Architecture.* A small turret or spire on a roof or buttress.
2. A tall, pointed formation, such as a mountain peak.
3. The highest point; the culmination. *See* synonyms at summit

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Side - 1

NOTICE OF ABANDONMENT

MAILING DATE: Mar 10, 2006

The trademark application identified below was abandoned because a response to the Office Action mailed on Aug 10, 2005 was not received within the 6-month response period.

If the delay in filing a response was unintentional, you may file a petition to revive the application with a fee. If the abandonment of this application was due to USPTO error, you may file a request for reinstatement. Please note that a petition to revive or request for reinstatement **must be received within two months from the mailing date of this notice.**

For additional information, go to <http://www.uspto.gov/teas/petinfo.htm>. If you are unable to get the information you need from the website, call the Trademark Assistance Center at 1-800-786-9199.

SERIAL NUMBER: 76596876

MARK: DOMAINE PINNACLE

OWNER: Domaines Pinnacle Inc.

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